

**IN THE UNITED STATES DISTRICT
COURT SOUTHERN DISTRICT OF
WEST VIRGINIA AT CHARLESTON**

IN RE: ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	MDL No. 2327 JOSEPH R. GOODWIN U.S. DISTRICT JUDGE
THIS DOCUMENT RELATES TO ALL KLINE & SPECTER, PC WAVE 8 CASES	

**KLINE & SPECTER, P.C. PLAINTIFFS' UNOPPOSED MOTION
FOR EXTENSION OF EXPERT REPORT DEADLINE**

Plaintiffs, herein, represented by Kline & Specter, P.C. (hereinafter "K&S Plaintiffs"), move for a sixty (60) day extension of the Plaintiff Expert Report Deadline for the K&S Plaintiff cases that are currently listed as a part of Wave 8 in this MDL proceeding.

I. Background

On January 30, 2018, the Court issued Pretrial Order No. 280, establishing case management deadlines for over 13,000 cases proceeding in the Ethicon MDL which became "Wave 8." Pretrial Order No. 280 set forth the following deadlines:

Plaintiff Fact Sheets	03/19/2018
Defendant Fact Sheets	04/19/2018
Deadline for written discovery requests	05/18/2018
Expert disclosure by plaintiffs	06/04/2018
Expert disclosure by defendants	07/05/2018
Expert disclosure for rebuttal purposes	07/23/2018
Deposition deadline and close of discovery	09/04/2018
Deadline to file list of general causation	
Experts in each individual Wave 7 case	09/11/2018
Filing of Dispositive Motions	09/21/2018
Response to Dispositive Motions	10/05/2018
Reply to response to dispositive motions	10/12/2018
Filing of <i>Daubert</i> motions	10/05/2018

Responses to *Daubert* motions 10/19/2018

Reply to response to *Daubert* motions 10/26/2018

Id.

K&S has over 300 cases in Wave 8 in this MDL proceeding in which plaintiffs' have asserted claims relating to the implantation of Ethicon pelvic mesh products. K&S Plaintiffs have complied with all deadlines to date, and K&S Plaintiffs' counsel has been expeditious in proceeding through the discovery of these cases, including scheduling the K&S Plaintiff depositions for over 300 cases listed in Wave 8. Yet, due to difficulties in many cases in obtaining medical records beyond K&S Plaintiffs' control, K&S Plaintiffs anticipate that they will be unable to meet the June 4, 2018 expert disclosure deadline for many cases listed in Wave 8. Accordingly, K&S Plaintiffs respectfully request that the plaintiff expert disclosure deadline be extended to August 3, 2018.

II. Legal Argument

District courts have broad discretion to manage the timing of discovery. *See Ardrey v. United Parcel Service*, 798 F.2d 679, 682 (4th Cir.1986), *cert. denied*, 480 U.S. 934 (1987). Under Federal Rule of Civil Procedure 16(b)(4), a party may move the Court to modify the Court's discovery schedule upon a showing of good cause. FED. R. CIV. P. 16(b)(4). A party demonstrates "good cause" by showing that the scheduling order deadlines cannot be met despite the party's diligent efforts. *Potomac Elec. Power Co. v. Elec. Motor Supply, Inc.*, 190 F.R.D. 372, 375 (D. Md. 1999).

While other factors warrant consideration, including danger of prejudice to the non-moving party, the length of delay and its potential impact on the judicial proceedings, the reason for the delay, and whether the movant acted in good faith, diligence is the hallmark of the Rule 16(b)(4) good cause standard.

Hunt v. Brooks Run Min. Co., LLC, 51 F.Supp.3d 627, 636 (S.D. WV 2014) (quoting *Paice, LLC v. Hyundai Motor Co.*, 2014 WL 3385300, *1 (D. Md. July 8, 2014)).

Despite K&S Plaintiffs' counsel's diligent efforts, in many cases there have been significant delays in the production of plaintiffs' medical records due to issues with medical records production which is beyond K&S Plaintiffs' control. The record copy service providers, despite their best efforts, have been slow to produce critical records of plaintiffs' treatment. Accordingly, in some cases, K&S Plaintiffs' counsel has been in contact with physicians' offices directly to obtain these records but have still experienced significant delays. In some cases, K&S Plaintiffs have contacted their own medical providers directly to obtain their medical records and have similarly experienced significant delays in the production of these critical records. The delays in obtaining medical records has made it impossible for K&S Plaintiffs' expert physicians to complete their medical reviews and author case-specific causation reports in such cases. Accordingly, good cause exists for an extension of the plaintiff expert disclosure deadline, and K&S Plaintiffs propose a sixty day extension to August 3, 2018.

A case-specific expert report is essential for the plaintiff's case to proceed in this litigation. Without the opportunity to compile complete medical records, K&S Plaintiffs will be greatly prejudiced as their experts will have insufficient or incomplete medical records upon which to base their case-specific causation opinions. Further, there will be no prejudice to Ethicon by granting this extension as K&S Plaintiffs will produce their expert reports more than a month before the close of discovery and more than three months before the *Daubert* motion deadline.

III. Conclusion

Accordingly, good cause exists for the modification of the Plaintiff Expert Disclosure deadline, and K&S Plaintiffs respectfully request a sixty (60) day extension to serve case-specific expert reports.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lee B. Balefsky', is written over a horizontal line.

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Date: April 24, 2018

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CERTIFICATE OF SERVICE

I certify that on April 24, 2018, I electronically filed this document with the clerk of the court using the CM/ECF system, which will send notification of this filing to CM/ECF participants registered to receive service in this MDL.

Respectfully submitted,



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